IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 420 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BACHUSINH LACHARIELAL NIGAM

Versus

DIVI. SECURITY COMMISSIONER

Appearance:

MR YN OZA for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1,4

MR SHANTILAL S SHAH for Respondent No. 2-3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 26/04/2002

ORAL JUDGEMENT

The petitioner has filed this petition under Article 226 of the Constitution of India challenging the order dated 19.12.1990 filed at Annexure 'A removing the petitioner from services and the order dated 3rd June 1991 filed at Annexure 'E' to the petition confirming the order of the dismissal. The petitioner has further sought the direction from this Court with regard to his

reinstatement in service and to allow him to perform his duties as Constable, Railway Protection Force at Udhna Railway Station with all consequential benefits. The petitioner has also prayed for interim relief seeking stay against the operation, implementation and execution and enforcement of the orders produced at Annexures 'A' and 'E' to this petition.

2. The petition was admitted on 10-2-1992. However, no interim relief was granted by this Court. The petitioner is, therefore, not in the service right from 19th December 1990.

3. The brief facts, giving rise to the present petition are stated in the petition. The petitioner has stated that his wife had delivered a child on 24.8.1990 and after 5 hours the child died, he had rushed to his home town in UP and after that, he had himself fallen sick and, therefore, he could not resume his duties for about 78 days and without informing the authorities he remained absent. The petitioner has further stated that he has joined the services on 18.1.1985 as a Constable with the respondent and as per the rules and procedures of the Railway Protection Force his services were confirmed after 3 years. It was further submitted that the entire service career of the petitioner was reasonably good and there was no major punishment inflicted upon the petitioner except in one which is under challenge before this Court.

4. The petitioner had further submitted that his absence of 78 days from the service was for genuine reasons as due to the sad demise of his child after 5 hours of its birth, his wife was mentally disturbed and her physical condition was also very serious. The petitioner has further submitted in the petition that while he was going to his native, some old enemy assaulted him and he received injuries and therefore he himself was admitted in Medical Hospital, Agra and he remained there till 29th September 1990. It was further submitted by the petitioner that even after getting discharge from the Medical College Hospital, Agra, the petitioner was taking treatment from the private Doctor till 5.11.1990 and on that day the Doctor issued Fitness Certificate and thereafter on 10.11.1990 the petitioner presented himself before the respondents with all certificates and requested the respondents to allow him to join the duties. It was further submitted by the petitioner that the petitioner was allowed to join duties on 11.11.1990 and thereafter departmental inquiry was started against the petitioner for remaining

unauthorisedly absent and pursuant to the said inquiry, the petitioner was removed from his service by the order dated 19.12.1990.

5. The petitioner, being aggrieved by the said order discharging him from the service, preferred an appeal before the Additional Chief Security Commissioner, and explained him in detail as to why he remained absent from duties. The petitioner further submitted that despite these facts, the respondent No.3 has passed an order dated 3.6.1991 and confirmed the order dated 19.12.1990 discharging the petitioner from his service.

6. Being aggrieved by this order, the petitioner has approached this Court and submitted that the action of the respondent in removing the petitioner from his service was unjust and violative of Articles 14 and 16 of the Constitution of India and therefore the said order requires to be quashed and set aside. The petitioner has further submitted that the penalty of dismissal or removal from his service should be used sparingly and in gross cases only. It is further submitted that the guilt of remaining absent without leave for such a short period can never fall in the category which will necessitate termination of service. The petitioner has also reiterated that he had remained absent for good reasons and considering those reasons the authority should not have inflicted such a harsh penalty to keep him out of service. The relief prayed for by the petitioner was opposed by the respondents and an affidavit-in-reply was filed by the Divisional Security Commissioner on 5th February 1993. It was submitted in the affidavit-in-reply that the Railway Protection Force is an Armed Force of the Union of India and its members are expected to maintain high sense of discipline and responsibility. It was further submitted that under the provisions of Section 17 of the Railway Protection Force Act, 1957, every enrolled member of the Force who shall withdraw from duties of his office without permission or who, being absent on leave may be taken into Force custody and shall, on conviction, be punished with imprisonment which may extend to one year. It was further submitted that the petitioner, after availing rest did not report for duty on 28.8.1990 and disappeared. Notices were sent to the petitioner at his home address which were returned undelivered by the postal authorities. It was further submitted that the petitioner resumed duty on 13.11.1990 and produced three different medical certificates from different Doctors puttingforth different versions. The petitioner's unauthorised absence from duty for a long period of about

78 days amounted to wilful withdrawal from duty which was considered a serious offence as per R.P.F. Rules. It was further submitted that the petitioner did not apply for any kind of leave nor informed the authority when he left his headquarters. It was further submitted that the Railway Protection Force being an Armed Force of the Union of India in which unauthorised absence from duty by the member of the Force, was considered severe breach of discipline and such member could not be considered on the roll.

7. The respondents have further submitted in the affidavit-in-reply that the first reason given out by the petitioner was that his son was born on 24.8.1990 and expired on the same day after 5 hours only. According to the respondents, this would not be a sufficient cause for remaining absent on 28.8.1990 without informing the authority. It was submitted that on 28.8.90 the petitioner had every opportunity to approach his superiors to take leave and go home and instead of doing that the petitioner had on his own left his headquarters and thereby committed an offence under Rule 147 (iv) and Rule 147 (vi) of the Railway Protection Force Rules, 1987. It was further submitted that when the petitioner was produced before the controlling authority on 15.11.90, one medical certificate was allowed to have been issued by private Doctor Vishwanath D. Patel, dated 12th November 1990, according to which certificate, the petitioner was under his treatment for the period from 27.8.90 to 11.11.90 and was advised to take complete bed-rest. It was further submitted that on 15.11.90 another certificate was produced by the petitioner before the controlling authority issued by the Divisional Medical Officer, Western Railway, Health Unit, Udhna, stating that the petitioner has not followed the medical rules. It was further submitted that the petitioner had produced a medical certificate dated 5.11.90 which was issued by Dr. R.K. Mathur of Agra. According to the respondents, the said certificate also contradicts the medical certificate dated 12.11.1990 issued by Dr. Vishwanath D. Patel. On the basis of these contradictions, the respondents have submitted that all the three certificates were obtained by the petitioner with some ulterior motive. On the basis of all these averments made in the affidavit-in-reply, it was submitted by the respondents that it was a serious offence on the part of the member of the Force to run away from the headquarters without any authority and remaining absent from duty for a considerable period of 78 days and such type of offence was taken a serious note while dealing with a member of the Armed Force and hence

it was submitted that the petitioner had deliberately contravened the provisions by absconding from headquarters, and did not inform about his whereabouts and also did not apply for leave even after resuming his duties. Considering this, the decision taken by the respondent authorities of discharging the petitioner from the service was quite just and proper and this Court should not interfere in the said decision.

8. At the time of hearing of this petition, neither the petitioner nor his advocate nor the respondents or their advocates remained present. While looking at the record and proceedings before this Court, it is found that on earlier occasions also, none of the parties was present and the Court was constrained to adjourn the matter. Today also, even at the second call, no one remained present. It appears, therefore, that the petitioner is not interested in pursuing this petition. Here is the case of Constable working in the Railway Protection Force and a person working in the Armed Force is supposed to maintain discipline and any breach committed by such person is viewed by the authorities very seriously. Here it is not only the question that the petitioner remained absent unauthorisedly for about 78 days but it is also a question of leaving the headquarters without informing the superior authorities. It is also a question of not informing his superior authorities about his whereabouts, and it is also a question of obtaining false medical certificates while resuming his duty and justifying his long period of absence. It is precisely for these reasons that while passing and/or confirming the order of discharge from service, the respondent authorities have observed that the R.P.F. being an Armed Force of the Union, its members are expected to maintain high sense of discipline and responsibility. Moreover, remaining absent for such a long period without giving intimation is a cognizable and non-bailable offence under Section 17(2) of the Railway Protection Force act, 1957 and is too serious charge to be taken lightly. The Force cannot afford to have such indiscipline and irresponsible member on its roll without severely impairing its efficiency. It is also important to observe here that even before discharging the petitioner from service, all procedural formalities were observed by the respondent authorities. Notices were given, explanations were called for, departmental inquiry was held, and on the basis of the finding arrived at after completion of the departmental inquiry the order discharging the petitioner was passed and even appeal filed against the order was also dismissed by the competent authority. This being the

factual position and concurrent finding of the disciplinary authority as well as appellate authority, this Court does not think it fit to interfere in the decision taken by the respondent authorities. The petition, therefore, does not deserve any merit, and having regard to the facts and circumstances of the case, it cannot be said that the penalty imposed on the petitioner was either illegal, improper or unjust. The petition is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.

[K.A. Puj, J.]
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